

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

3 MURRY KIMMEL,                                   )

4                                   Plaintiff                                   )

5                                   v.                                   )

6 NORTHLAND GROUP, INC.,                                   )

7                                   Defendant                                   )

Case No.:

COMPLAINT AND DEMAND FOR  
JURY TRIAL

(Unlawful Debt Collection Practices)

9                                   **COMPLAINT**

10  
11                   MURRY KIMMEL ("Plaintiff"), by and through his attorneys, KIMMEL &  
12 SILVERMAN, P.C., alleges the following against NORTHLAND GROUP, INC. ("Defendant"):

13  
14                                   **INTRODUCTION**

15               1.       This is an action for damages brought by an individual consumer for Defendant's  
16 violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter  
17 "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair  
18 practices.

19  
20                                   **JURISDICTION AND VENUE**

21  
22               2.       Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states  
23 that such actions may be brought and heard before "any appropriate United States district court  
24 without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original  
25 jurisdiction of all civil actions arising under the laws of the United States.

1           3.     Defendant conducts business in the Commonwealth of Pennsylvania, and  
2 therefore, personal jurisdiction is established.

3           4.     Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

4           5.     Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.  
5

6  
7                                   **PARTIES**

8           6.     Plaintiff is a natural person residing in Philadelphia, Pennsylvania.

9           7.     Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

10          8.     Defendant is a debt collection company with its corporate headquarters located at  
11 7831 Glenray Road, Suite 250, in Edina, Minnesota, 55439.

12          9.     Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),  
13 and in its attempts to collect a debt from Plaintiff, Defendant disclosed to a third party that  
14 Plaintiff owed a debt.

15          10.    Defendant acted through its agents, employees, officers, members, directors,  
16 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.  
17

18                                   **PRELIMINARY STATEMENT**

19          11.    The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,  
20 which prohibits a catalog of activities in connection with the collection of debts by third parties.  
21 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that  
22 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,  
23 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the  
24 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and  
25

1 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
2 unconscionable conduct, both generally and in a specific list of disapproved practices.

3       12. In particular, the FDCPA broadly enumerates several practices considered  
4 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
5 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
6 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
7 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
8 collector may not use any false, deceptive, or misleading representation or means in connection  
9 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
10 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
11 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
12 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
13 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
14 connection with the collection of a debt.  
15

16       13. In enacting the FDCPA, the United States Congress found that “[t]here is  
17 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
18 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
19 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
20 additionally found existing laws and procedures for redressing debt collection injuries to be  
21 inadequate to protect consumers. 15 U.S.C. § 1692b.  
22

23       14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
24 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
25 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote consistent State action  
2 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

3  
4 **FACTUAL ALLEGATIONS**

5 15. At all relevant times, Defendant was attempting to collect an alleged consumer  
6 debt from Plaintiff.

7 16. The alleged debt at issue arose out of transactions, which were primarily for  
8 personal, family, or household purposes.

9 17. Beginning in or around May 2010 and continuing through January 2011,  
10 Defendant engaged in debt collection activities in an attempt to collect a consumer debt from  
11 Plaintiff.

12 18. In its attempts to collect a debt from Plaintiff, Defendant placed multiple calls to:  
13 (215) XXX-XX29, a residence where Plaintiff does not live but rather where Plaintiff's son's  
14 family resides.

15 19. Plaintiff and his son do not have the same first or middle name, or even the same  
16 first or middle initials.

17 20. Defendant also placed numerous voice mail messages on the answering machine  
18 of Plaintiff's son, at (215) XXX-XX29, regarding a debt allegedly owed by Plaintiff.

19 21. Most recently, on or about January 27, 2011, Defendant called (215) XXX-XX29  
20 and left a voicemail message stating:

21  
22  
23 ...569-7149. If this is not Murray Kimmel or we have reached you  
24 in error, please call 866-579-0026 to report the wrong phone  
25 number. Thank you.

Hello, this is an important message for Murray Kimmel.  
This is the Northland Group. We recently sent you a letter  
regarding a business matter. Please press 1 now to retrieve your

1 message or call us back at 888-569-7149.

2 If this is not Murray Kimmel or we have reached you in  
3 error, please call 866-579-0026 to report the wrong phone number.  
4 Thank you.

5 See Exhibit A, audio message.

6 22. Defendant failed to identify itself as a debt collector in its voicemail messages for  
7 Plaintiff.

8 23. Additionally, Defendant deceptively claimed that it had sent him a letter regarding  
9 a business matter, when in fact Defendant was attempting to collect a personal debt from  
10 Plaintiff, making the statement false.

11 24. Further, Defendant's voicemail messages were heard by members of his son's  
12 family when placed, as the machine operates in "call screening" fashion, allowing the recipient  
13 to hear the person leaving the message in real time, when placed.

14 25. Messages were also heard after they had been recorded, on occasions where the  
15 machine indicated a new message.

16 26. Plaintiff's grandchild and her mother heard the messages.

17 27. Calls were also received from Defendant originating from telephone number:  
18 (888) 569-7149, which the undersigned has confirmed is a phone number for Defendant.

19 28. Plaintiff does not reside with his son's family, or even in the same county as his  
20 son's family.

21 29. Plaintiff did not consent to allow Defendant to disclose information about the debt  
22 to his son's family.

23 30. Defendant failed to insure that the telephone number being called was Plaintiff's.

24 31. Upon information and belief, Defendant knew from prior investigation that the  
25 telephone number was in fact not Plaintiff's, each time before a call was placed.

32. Upon information and belief, Defendant intentionally called the phone number (215) XXX-XX29, hoping that Plaintiff would be embarrassed by the call to his son's family residence and then contact Defendant to address the matter.

33. Defendant's tactics as referenced above are upon information and belief taught by Defendant to its collectors and incorporated into the procedures utilized by them on a daily basis, as a means to collect debt in violation of the FDPCA.

### CONSTRUCTION OF APPLICABLE LAW

29. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

30. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

31. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the

1 public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and  
 2 the fact that a false statement may be obviously false to those who are trained and experienced  
 3 does not change its character, nor take away its power to deceive others less experienced.” Id.  
 4 The least sophisticated consumer standard serves a dual purpose in that it ensures protection of  
 5 all consumers, even naive and trusting, against deceptive collection practices, and protects  
 6 collectors against liability for bizarre or idiosyncratic interpretations of collection notices.  
 7 Clomon, 988 F. 2d at 1318.

8  
 9 **COUNT I**  
 10 **DEFENDANT VIOLATED THE**  
 11 **FAIR DEBT COLLECTION PRACTICES ACT**

12 32. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or  
 13 more of the following ways:

- 14 a. Defendant violated of the FDCPA generally;
- 15 b. Defendant violated §1692b(2) of the FDCPA by stating to a third person that  
 16 Plaintiff owed a debt to another person;
- 17 c. Defendant violated §1692b(3) of the FDCPA by communicating with  
 18 Plaintiff’s son’s family more than once about a debt alleged to be owed by  
 19 Plaintiff, without good faith basis to do so;
- 20 d. Defendant violated §1692c(b) of the FDCPA by communicating with  
 21 Plaintiff’s son’s family about a debt alleged to be owed by Plaintiff without  
 22 prior consent;
- 23 e. Defendant violated §1692d of the FDCPA by harassing Plaintiff in  
 24 connection with the collection of an alleged debt;
- 25 f. Defendant violated §1692f of the FDCPA by using unfair and unconscionable

means with Plaintiff to collect or attempt to collect a debt; and

g. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

WHEREFORE, Plaintiff, MURRAY KIMMEL, respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA;
- B. Actual damages;
- C. Statutory damages;
- D. Costs and reasonable attorney's fees; and,
- E. For such other and further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, MURRAY KIMMEL, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: 5-20-11

KIMMEL & SILVERMAN, P.C.

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